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**Rules of**  
**Department of Transportation**  
**Division 10—Missouri Highways and Transportation**  
**Commission**  
**Chapter 10—Contractor Performance Rating**  
**to Determine Responsibility**

<b>Title</b>	<b>Page</b>
<b>7 CSR 10-10.010</b> Definition .....	3
<b>7 CSR 10-10.020</b> Explanation of Contractor Performance Rating System .....	3
<b>7 CSR 10-10.030</b> Rating Categories for Evaluating the Performance of a Contractor .....	4
<b>7 CSR 10-10.040</b> Contractor Performance Questionnaire Used in Evaluating Contractor Performance .....	4
<b>7 CSR 10-10.050</b> Procedure and Schedule for Completing the Contractor Performance Questionnaire .....	4
<b>7 CSR 10-10.060</b> Explanation of Standard Deviation Rating System for all Contractors .....	5
<b>7 CSR 10-10.070</b> Procedure for Annual Rating of Contractors .....	5
<b>7 CSR 10-10.080</b> Determination of Nonresponsibility .....	6
<b>7 CSR 10-10.090</b> Reservation of Rights to Recommend or Declare Persons or Contractors Nonresponsible on Other Grounds .....	6
<b>7 CSR 10-10.100</b> Procedure for Reinstatement of a Person or Contractor Previously Declared Nonresponsible (Rescinded May 30, 1998) .....	6
<b>7 CSR 10-10.110</b> Effect of Reinstatement of a Person or Contractor Previously Declared Nonresponsible (Rescinded November 20, 1997) .....	6
<b>7 CSR 10-10.120</b> Reservation of Rights to Recommend or Declare Persons or Contractors Nonresponsible on Other Grounds (Rescinded May 30, 1998) .....	6
<b>7 CSR 10-10.130</b> Addresses for Written Notification or Appeal (Rescinded May 30, 1998) .....	6

**Title 7—DEPARTMENT OF  
TRANSPORTATION**  
**Division 10—Missouri Highways and  
Transportation Commission**  
**Chapter 10—Contractor Performance  
Rating to Determine Responsibility**

**7 CSR 10-10.010 Definitions**

*PURPOSE: This rule contains the definitions of terms used in this chapter.*

(1) Affiliate. A person, firm or corporation is an affiliate of another person, firm or corporation if, directly or indirectly, either one controls or has the power to control the other, or third persons or a firm controls or has the power to control both. Examples of control include, but are not limited to: interlocking management or ownership, identity or interests among family members, shared facilities or equipment, or common use of employees.

(2) Bidder. Any individual, partnership, corporation or any person or firm participating as part of a joint venture in submitting a proposal to the commission to perform the work contemplated.

(3) Chief engineer. The chief engineer of the Missouri Department of Transportation.

(4) Commission. The Missouri Highways and Transportation Commission.

(5) Contractor. The individual, partnership, corporation, or person or firm participating in a joint venture, undertaking performance of the work under the terms of a contract with the commission and acting directly or through his/her/its agents, employees or subcontractors.

(6) Department. The Missouri Department of Transportation.

(7) District. One (1) of ten (10) geographic regions of Missouri established for administrative purposes within the department.

(8) District engineer. The engineer in charge of a district.

(9) Division, or division of construction. The division of construction within the department.

(10) Division engineer. Unless this term is used with reference to another division of the department, it means the division engineer of construction.

(11) Mean. The sum of all of the individual contractor's ratings divided by the total number of ratings.

(12) Nonresponsible contractor. A contractor determined by the commission to lack one (1) or more of the qualities associated with a responsible bidder or responsible contractor.

(13) Principal. A person is a principal of a firm if s/he is an officer, director, owner, partner or other person with that firm who has primary management, supervisory or bidding duties or authority.

(14) Resident engineer. The individual employed by the department and assigned to a district, holding that title, who is the department's representative assigned the immediate control and administration of a commission project awarded by contract to a contractor for construction. Whenever appropriate, it also refers to his/her designated representative.

(15) Responsible bidder or responsible contractor. A contractor, or any contractor or firm which participates collectively in a joint venture, which is capable financially, skilled and has sufficient integrity, experience and resources of all kinds, to promptly complete a project awarded, to provide a satisfactory quality of work, in compliance with the contract, in cooperation with the department and others, and in a safe manner.

(16) Standard deviation. The square root of the average difference between the individual ratings and their mean.

(17) Subcontractor. Any individual, partnership, corporation or a person or firm participating as part of a joint venture, to whom the contractor sublets any part of the work under a commission contract.

(18) Successor. A person, firm or corporation is a successor to another if it is a business entity organized following the disqualification of the other, and it has the same or similar management, ownership or principal employees as the disqualified person, firm or corporation.

*AUTHORITY: sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency amendment filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Amended: Filed Nov. 20, 1997, effective May 30, 1998.*

*\*Original authority: 226.020 and 227.030, RSMo (1939), 226.130, RSMo (1939), amended 1993; and 227.100, RSMo (1939), amended 1963, 1967, 1969.*

**7 CSR 10-10.020 Explanation of Contractor Performance Rating System**

*PURPOSE: This rule explains the need for the contractor rating system established in this chapter and states the general objectives of the system.*

(1) The commission has the obligation to award its contracts to only responsible bidders. The commission also has the duty to supervise and control the construction and maintenance of its state highway system. Inherent in these concepts, and in the commission's general obligation to the traveling public of this state, is that the commission must regulate those who construct the finished highway product. The commission does not prequalify persons or firms as responsible bidders and contractors. Therefore, it requires a system for evaluating the performance of those contractors working on commission projects.

(2) This contractor rating system is intended to help the commission periodically determine those contractors who are responsible or are nonresponsible and those responsible contractors whose outstanding or superior performance merits recognition by the commission. In the process, the rating system is intended to provide the contractors with evaluations of their work and information they can use to improve their performance and product on future commission projects.

(3) These regulations also set forth the procedures governing how contractors who render unsatisfactory performance may be determined nonresponsible and ineligible to bid for work on commission projects and how nonresponsible contractors may be reinstated as responsible bidders or responsible contractors.

*AUTHORITY: sections 226.020, 227.030 and 227.100, RSMo 1986 and 226.130, RSMo Supp. 1993.\* Original rule filed Dec. 31, 1990, effective July 8, 1991.*

*\*Original authority: 226.020 and 227.030, RSMo (1939), 226.130, RSMo (1939), amended 1993; and 227.100, RSMo (1939), amended 1963, 1967, 1969.*

**7 CSR 10-10.030 Rating Categories for Evaluating the Performance of a Contractor**

*PURPOSE:* This rule sets forth the rating criteria used in evaluating the performance of contractors awarded commission projects.

(1) Contractors awarded commission projects shall be rated on the following four (4) basic categories:

(A) Quality of work includes, but is not limited to, construction methods, materials, structural adequacy, appearance, workmanship, attention to detail and acceptable work;

(B) Contract compliance includes, but is not limited to, public relations, timely compliance, frequency of complaints from the public, cooperation with others, submittal of required documents, maintenance of the work site and adherence to environmental requirements;

(C) Prosecution and progress includes, but is not limited to, proper planning and execution, achieving the progress schedule, coordinating subcontractors and timely completion; and

(D) Safety includes, but is not limited to, public safety, compliance with traffic control, handling of traffic and general work site safety;

(2) Each question will be assigned to a category and will be assigned a point value for comparison purposes. Questions will be completed according to the guidelines shown on the questionnaire. Not all questions will be applicable and will, therefore, not be completed.

(3) A contractor's individual category rating in the category of "Quality" will be determined by comparing the total number of points awarded to the total number of points assigned, to each question completed, based on the weighted average of the total dollar value of work completed to date and pertaining to each section of the questionnaire. A contractor's individual category rating, for the remaining categories, will be determined by comparing the total number of points awarded in each category to the total number of points assigned to each question completed in that category.

(4) For overall rating purposes, the categories are assigned importance factors as follow: quality of work, thirty percent (30%); contract compliance, twenty percent (20%); prosecution and progress, thirty percent (30%); and safety, twenty percent (20%).

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency amendment filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998, Amended: Filed Nov. 20, 1997, effective May 30, 1998.

\*Original authority: 226.020 and 227.030, RSMo (1939), 226.130, RSMo (1939), amended 1993; and 227.100, RSMo (1939), amended 1963, 1967, 1969.

**7 CSR 10-10.040 Contractor Performance Questionnaire Used in Evaluating Contractor Performance**

*PURPOSE:* This rule describes generally the form used in rating and reporting a contractor's performance on a contract, according to the provisions of this chapter.

(1) The form used to evaluate contractor performance on a commission contract is known as the Contractor Performance Questionnaire. The Contractor Performance Questionnaire identifies the contractor, the project(s) to which it applies, the nature of the report as final or annual, the original and final contract amounts and other pertinent project data.

(2) One (1) form is intended to rate all projects together which were awarded in a combination bid contract. The Contractor Performance Questionnaire shall designate all project(s) listed in the contract on these combinations.

(3) The Contractor Performance Questionnaire contains questions that are assigned to the four (4) evaluation categories: quality of work; prosecution and progress; contract compliance; and safety. Not all questions will be applicable on any certain project and will, therefore, not be completed.

(4) The Contractor Performance Questionnaire shall rate a contractor on the work required in the whole contract and shall take into consideration the contractor's progress and work product, as well as those of all the subcontractors. The contractor is responsible for all work required in the contract, as well as the selection of subcontractors and the quality of their work.

(5) A copy of the Contractor Performance Questionnaire may be obtained by submitting a written request to the following address: Missouri Department of Transportation, Division of Construction, P.O. Box 270, Jefferson City, MO 65102.

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998.

\*Original authority: 226.020, RSMo 1939; 227.030, RSMo 1939, 227.100, RSMo 1939, amended 1963, 1967, 1969; 226.130, RSMo 1939, amended 1993, 1995.

**7 CSR 10-10.050 Procedure and Schedule for Completing the Contractor Performance Questionnaire**

*PURPOSE:* This rule describes the procedures and schedule which apply to the completion of the Contractor Performance Questionnaire.

(1) The Contractor Performance Questionnaire shall be completed by the resident engineer assigned to the contract project(s). If the resident engineer is unable to complete the form, the district engineer responsible for those projects shall designate another person familiar with those projects to complete the Contractor Performance Questionnaire.

(2) The Contractor Performance Questionnaire shall be completed in accordance with this chapter and with written instructions given the resident engineer by the Division of Construction. A copy of the current instructions may be obtained from the division engineer.

(3) Each Contractor Performance Report shall be completed as an Annual Report or Final Report. The report shall indicate its type of report. The following criteria govern each type of report and when it is completed:

(A) Annual Report. Annual reports shall be submitted on all projects that are incomplete as of January 1. This report shall be completed no later than January 15 of each year for active contracts. This is an interim report and will be completed based on the information available to the rater at the time; and

(B) Final Report. Final reports shall be submitted on all projects completed during the period from January 1 through December 31. All physical work items related to the project shall be complete. This report will be typically completed within thirty (30) days after final project acceptance, but shall be completed no later than January 15. Prior reports on the same contract shall not bind or govern the completion of a final report.

(4) The resident engineer shall sign and date the Contractor Performance Questionnaire when s/he completes his/her rating. The contractor's representative, at his/her election, may meet privately with the resident engineer to review the questionnaire. If the contractor's representative does review the questionnaire, s/he shall sign and date it as an acknowledgment that s/he has reviewed it. A copy of the questionnaire shall be furnished to the contractor by the resident engineer. If the contractor's representative does not return a signed questionnaire to the resident engineer within two (2) weeks after it has been mailed to him/her, the questionnaire shall be final, with no further comment to be considered by the contractor's representative. If the contractor disagrees with any particular rating on the questionnaire, s/he may request in writing that the district engineer review the matter. Such request must be made to the district engineer within twenty-eight (28) days from the date of the mailing of the questionnaire form to the contractor. However, the contractor's representative shall first have discussed the discrepancy with the resident engineer in order to resolve the dispute. Upon receiving the contractor's written request to review the particular area of discrepancy on the questionnaire, the district engineer shall review the matter and provide the contractor with a written response regarding the particular area of dispute between the contractor and the resident engineer. All reports shall be submitted to the Division of Construction before, but no later than, February 15.

**AUTHORITY:** sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998.

\*Original authority: 226.020, RSMo 1939; 227.030, RSMo 1939; 227.100, RSMo 1939, amended 1963, 1967, 1969; and 226.130, RSMo 1939, amended 1993, 1995.

#### 7 CSR 10-10.060 Explanation of Standard Deviation Rating System for all Contractors

**PURPOSE:** This rule describes the procedures and rating values used in annual ratings of contractors.

(1) Statistical Analysis. Statistical analysis shall be used by the commission to compare performance by the contractors. Through

standard deviation analysis, the commission shall determine how contractors relate to each other.

(2) Rating Categories. The following categories shall be used by the commission in determining the annual rating of each contractor based on the Contractor Performance Questionnaire and on the statistical analysis used by the commission: average, above average, below average, outstanding and unacceptable:

(A) Average Rating. An average rating shall result if the contractor's rating is within the range of the mean plus or minus one (1) standard deviation;

(B) Above Average Rating. An above average rating shall result if the contractor's rating is equal to or greater than the mean plus one (1) standard deviation but less than the mean plus two (2) standard deviations;

(C) Outstanding Rating. An outstanding rating shall result if the contractor's rating is equal to or greater than the mean plus two (2) standard deviations;

(D) Below Average Rating. A below average rating shall result if the contractor's rating is equal to or less than the mean minus one (1) standard deviation but greater than the mean minus two (2) standard deviations; and

(E) Unacceptable Rating. An unacceptable rating shall result if the contractor's rating is equal to or less than the mean minus two (2) standard deviations.

(3) Overall and Category Ratings. On an annual basis, each contractor who has done work for the commission and which the commission has completed a Contractor Performance Questionnaire, shall be given a rating for each of the four (4) categories: quality of work, prosecution and progress, contract compliance and safety as well as receiving an overall rating which combines the ratings of all of the four (4) categories.

**AUTHORITY:** sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Amended: Filed April 13, 1994, effective Oct. 30, 1994. Amended: Filed June 12, 1996, effective Jan. 30, 1997. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998.

\*Original authority: 226.020, RSMo 1939; 227.030, RSMo 1939; 227.100, RSMo 1939, amended 1963, 1967, 1969; and 226.130, RSMo 1939, amended 1993, 1995.

#### 7 CSR 10-10.070 Procedure for Annual Rating of Contractors

**PURPOSE:** This rule describes the procedures used in annual rating of contractors.

(1) Annual Rating of Contractors. The Division of Construction shall be responsible for the determination of the annual ratings of contractors. The Division of Construction will annually determine a contractor's overall and category performance rating for all contracts on which work was performed during the period, January 1 through December 31. The rating will be based on a weighted average of the dollar value of work completed of all contracts. The rating will use the final report data when it is available and otherwise will use annual reports for contracts in progress.

(2) Upon the division's annual rating of all contractors, the ratings shall be reviewed by the division engineer. Upon the division's approval, the ratings shall be submitted to the department's chief engineer for final review. Upon approval from the department's chief engineer, all contractors shall be notified in writing of their annual ratings. The Division of Construction will act on each contractor or not, based on the overall and category rating the contractor receives. These actions may range from recognizing very outstanding performance, to recommending that a contractor be declared nonresponsible.

(3) No Further Commission Action. Upon the determination by the division regarding the annual ratings of all contractors and the approval of the chief engineer of the annual ratings, the ratings of the contractors shall become final for purposes of this chapter and the effect of a level of performance. No commission action is necessary regarding the annual ratings of the contractors.

(4) No Appeal. No appeal to the commission or to the department regarding the contractors' performance ratings is permitted under this chapter.

**AUTHORITY:** sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998.

\*Original authority: 226.020, RSMo 1939; 227.030, RSMo 1939; 227.100, RSMo 1939, amended 1963, 1967, 1969; and 226.130, RSMo 1939, amended 1993, 1995.

**7 CSR 10-10.080 Determination of Nonresponsibility**

*PURPOSE:* This rule describes the effect and consequences that a commission determination of nonresponsibility has upon the person or contractor which has been disqualified under the provisions of this chapter.

(1) Overall Unacceptable Rating. Upon a contractor's first occurrence of an unacceptable "overall" rating, the contractor shall be placed on probation by the commission. If a contractor is currently on probation and receives a second "overall" unacceptable rating, the contractor shall be declared nonresponsible and shall be suspended by the commission for a period of one (1) year. During this suspension period, no bids shall be accepted from the contractor. At the conclusion of the suspension period, the contractor shall be reinstated on a probationary status and will be allowed to bid on commission projects. Any contractor who has been previously suspended for unacceptable performance, has a current deficiency status, and receives a subsequent unacceptable overall rating shall be declared nonresponsible and shall be barred from bidding on any commission projects for a period of three (3) years. After this three (3)-year debarment has expired, the contractor may be reinstated on a probationary basis. Any deficiency status shall remain in effect until the contractor obtains an overall rating above the mean.

(2) Category Unacceptable Rating. A contractor who receives an initial unacceptable "category" rating shall be placed on probation. Any contractor who is on probation and receives a second unacceptable category rating shall be declared nonresponsible and shall be suspended for a period of one (1) year. During this suspension period, no bids shall be accepted from the contractor. At the conclusion of this suspension period, the contractor shall be reinstated on a probationary basis and be allowed to bid on commission projects. Any contractor who has previously been suspended for unacceptable performance, has a current deficiency status, and receives a subsequent unacceptable category rating shall be declared nonresponsible and shall be barred from bidding on commission projects for a period of three (3) years. After the three (3)-year debarment period has ended, the contractor may be reinstated on a probationary basis. Any deficiency status shall remain in effect until the contractor obtains an annual average category rating in all categories.

(3) Affiliates of the Contractor. Any probation, suspension or debarment of the contractor shall be equally applicable to all affiliates of the contractor.

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998.

\*Original authority: 226.020, RSMo 1939, 227.030, RSMo 1939, 227.100, RSMo 1939, amended 1963, 1967, 1969; and 226.130, RSMo 1939, amended 1993, 1995.

**7 CSR 10-10.090 Reservation of Rights to Recommend or Declare Persons or Contractors Nonresponsible on Other Grounds**

*PURPOSE:* This rule reserves to the department the right to recommend disqualification of, and to the commission the right to disqualify persons, firms or contractors for reasons other than those set forth in this chapter.

(1) Nothing in this chapter shall be construed to waive, limit or restrict the right of the chief engineer to recommend that a contractor be declared nonresponsible, if any individual rating on one (1) or more of the four (4) rating categories specified in 7 CSR 10-10.030 is so low that the chief engineer has cause to believe that the contractor cannot responsibly or competently perform contract work generally, or of a particular type or description. The commission reserves the right to declare nonresponsible any contractor which it finds to be incompetent or nonresponsible, with those terms and conditions governing the disqualification as it deems appropriate.

(2) Nothing in this chapter shall be construed to waive, limit or restrict the right of the chief engineer to recommend that a person, firm, corporation or contractor be declared nonresponsible for any other legal reason, circumstance, or for financial irresponsibility that would support a finding that the person, firm, corporation, or contractor was nonresponsible. The commission reserves the right to declare nonresponsible any person, firm, corporation or contractor which it finds to be nonresponsible upon sufficient legal grounds, with those terms and conditions governing the disqualification as it deems appropriate.

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1994 and 226.130, RSMo Supp. 1997.\* Original rule filed Dec. 31,

1990, effective July 8, 1991. Emergency rescission and rule filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded and readopted: Filed Nov. 20, 1997, effective May 30, 1998..

\*Original authority: 226.020, RSMo 1939; 227.030, RSMo 1939; 227.100, RSMo 1939, amended 1963, 1967, 1969; and 226.130, RSMo 1939, amended 1993, 1995.

**7 CSR 10-10.100 Procedure for Reinstatement of a Person or Contractor Previously Declared Nonresponsible**  
(Rescinded May 30, 1998)

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1986 and 226.130, RSMo Supp. 1993. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded: Filed Nov. 20, 1997, effective May 30, 1998.

**7 CSR 10-10.110 Effect of Reinstatement of a Person or Contractor Previously Declared Nonresponsible**  
(Rescinded May 30, 1998)

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1986 and 226.130, RSMo Supp. 1993. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded: Filed Nov. 20, 1997, effective May 30, 1998.

**7 CSR 10-10.120 Reservation of Rights to Recommend or Declare Persons or Contractors Nonresponsible on Other Grounds**  
(Rescinded May 30, 1998)

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1986 and 226.130, RSMo Supp. 1993. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission filed Nov. 20, 1997, effective Jan. 1, 1998, expired June 29, 1998. Rescinded: Filed Nov. 20, 1997, effective May 30, 1998.

**7 CSR 10-10.130 Addresses for Written Notification or Appeal**  
(Rescinded May 30, 1998)

*AUTHORITY:* sections 226.020, 227.030 and 227.100, RSMo 1986 and 226.130, RSMo Supp. 1993. Original rule filed Dec. 31, 1990, effective July 8, 1991. Emergency rescission filed Nov. 20, 1997, effective Jan. 1998, expired June 29, 1998. Rescinded: Filed Nov. 20, 1997, effective May 30, 1998.